

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

Daniel Lee VanderZwaag and
Patrical Leanne VanderZwaag,

Debtors

Case No. 21-02646-swd
Chapter 7

HON. Scott W. Dales
Bankruptcy Court Judge

**COMMUNITY WEST CREDIT UNION'S MOTION FOR RELIEF FROM AUTOMATIC STAY
AND FOR ORDER WAIVING THE PROVISION OF FRBP 4001(a)(3)**

Community West Credit Union ("Credit Union"), by its attorney, Charles J. Hiemstra, files this Motion for Relief from the Automatic Stay and for Order Waiving the Provision of FRBP 4001(a)(3) as follows:

1. The Debtors filed for relief under Chapter 7 of the Bankruptcy Code on December 3, 2021.
2. The Credit Union is a secured creditor of the Debtor, Daniel VanderZwaag, pursuant to a Loan and Security Agreements and Disclosure Statement dated April 12, 2018, a copy of which is attached as Exhibit A.
3. The Credit Union's secured interest is in a 2011 Ford F150 pickup truck, VIN: 1FTFW1EFXBFA10174 (the "Vehicle").
4. The Credit Union's secured interest in the Vehicle is perfected as evidenced by the Receipt for RD-108 Dealer transaction, a copy of which is attached as Exhibit B.
5. The Debtor is in default under the Loan Agreement by failing to make the required payments. The Loan Agreement is currently past due in the amount of \$1,945.52. The Loan Agreement is due for the August 15, 2021, payment and all payments thereafter.
6. The remaining balance owing on the Loan Agreement is \$11,254.70. Based on the value of the Vehicle stated in the Debtors' Schedules, there is no equity.
7. Although the Debtor has stated an intent to retain the Vehicle and reaffirm the indebtedness, the Credit Union is unwilling to do so for lack of payment and lack of adequate protection.
8. Based on the foregoing there is just cause for termination of the automatic stay.

Requested Relief: The Credit Union requests that this Court enter its order granting it relief from the automatic stay to permit the Credit Union to exercise its remedies under non-bankruptcy law with regard to the 2011 Ford F150 pickup truck, VIN: 1FTFW1EFXBFA10174.

The Credit Union further requests that this court enter its order waiving the provision of FRBP 4001(a)(3).

Dated: December 16, 2021

/s/ Charles J. Hiemstra

Charles J. Hiemstra (P24332)
Attorney for Community West Credit Union
125 Ottawa Avenue NW, Suite 310
Grand Rapids, MI 49503
(616) 235-3100

P.O. Box 8069
Kentwood, MI 49518Loan and Security Agreements
and Disclosure Statement

LOAN DATE 04/12/2018	LOAN NUMBER 681	ACCOUNT NUMBER [REDACTED]	GROUP POLICY NUMBER [REDACTED]	MATURITY DATE 04/15/2022
BORROWER 1		BORROWER 2		
NAME AND ADDRESS DANIEL VANDERZWAAG 8914 BRIGADOON LN S WEST OLIVE MI 49460-9497		NAME (AND ADDRESS IF DIFFERENT FROM BORROWER 1)		

TRUTH IN LENDING DISCLOSURE 'e' means an estimate						
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price		
The cost of your credit as a yearly rate. 5.500 %	The dollar amount the credit will cost you. \$ 2,444.89 e	The amount of credit provided to you or on your behalf. \$ 20,901.20	The amount you will have paid after you have made all payments as scheduled. \$ 23,346.09 e	The total cost of your purchase on credit is \$ 23,346.09 which includes your downpayment of \$ N/A		
Your Payment Schedule Will Be:			Prepayment: If you pay off early you will not have to pay a penalty.			
Number of Payments	Amount of Payments	When Payments Are Due	Required Deposit: The Annual Percentage Rate does not take into account your required deposit, if any.			
47	\$ 486.38	05/15/2018 MONTHLY THEREAFTER	Demand: <input type="checkbox"/> This obligation has a demand feature. All disclosures are based on an assumed maturity of one year.			
1	\$ 486.23	04/15/2022	Filing Fees: \$ N/A Non-Filing Insurance: \$ N/A			
Property Insurance: You may obtain property insurance from anyone you want that is acceptable to the Credit Union. If you get the insurance from us, you will pay \$ N/A						
Late Charge: If payment is more than 10 day(s) late, you will be charged 5.00% of the scheduled payment or \$20.00, whichever is greater.						
Security: Collateral securing other loans with the Credit Union may also secure this loan. You are giving a security interest in your shares and dividends and, if any, your deposits and interest in the Credit Union; and the property described below:						
Collateral	Property/Model/Make	Year	I.D. Number	Type	Value	Key Number
FORD	F150	11	1FTFW1EFXBFA10174	A	\$ 21,800.00	
Other (Describe)						
Pledge of Shares \$		in Account No.	\$		in Account No.	
See your contract documents for any additional information about nonpayment, default, and any required repayment in full before the scheduled date.						

SIGNATURES

By signing, or otherwise authenticating, as Borrower, you agree to the terms of the Loan Agreement. If property is described in the "Security" section of the Truth in Lending Disclosure, you also agree to the terms of the Security Agreement. If you sign, or otherwise authenticate, as "Owner of Property" you agree only to the terms of the Security Agreement.

CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE AGREEMENT BEFORE YOU SIGN IT.

Borrower 1 Signature	Date
X <i>Daniel Lee Vander Zwaag</i>	04/12/2018
(Seal)	

Borrower 2 Signature	Date
X	
(Seal)	

Signature	Date
X <i>[Signature]</i>	4-12-18
(Seal)	

Signature	Date
X	04/12/2018
(Seal)	

☐ Other Borrower ☐ Owner of Property ☒ Witness

☐ Other Borrower ☐ Owner of Property ☐ Witness

Credit Union COMMUNITY WEST CREDIT UNION
 Borrower(s) DANIEL VANDERZWAAG

Loan No. 681

Acct. No. [REDACTED]

ITEMIZATION OF THE AMOUNT FINANCED

Itemization of Amount Financed of	Amount Given to You Directly	Amount Paid on Your Account	Prepaid Finance Charge
\$ 20,901.20	\$ N/A	\$ N/A	\$ N/A
Amounts Paid to Others on Your Behalf: (If an amount is marked with an asterisk (*) we will be retaining a portion of the amount.)			
\$ 20,901.20	To PAY OFF LOAN 675	\$	To
\$	To	\$	To
\$	To	\$	To
\$	To	\$	To
\$	To	\$	To
\$	To	\$	To

LOAN AGREEMENT

In this Loan Agreement ("Agreement") all references to "Credit Union," "we," "our," or "us," mean the Credit Union whose name appears above and anyone to whom the Credit Union assigns or transfers this Agreement. All references to "you," or "your" mean each person who signs, or otherwise authenticates, this Agreement as a borrower.

1. PROMISE TO PAY - You promise to pay \$ 20,901.20 to the Credit Union plus interest on the unpaid balance until what you owe has been repaid. For fixed rate loans the interest rate is 5.500 % per year.

Collection Costs: You promise to pay all costs of collecting the amount you owe under this Agreement to the extent permitted by state law.

2. PAYMENTS - You promise to make payments of the amount and at the time shown in the Truth in Lending Disclosure. You may prepay any amount without penalty. If you prepay any part of what you owe, you are still required to make the regularly scheduled payments, unless we have agreed to a change in the payment schedule. Because this is a simple interest loan, if you do not make payments exactly as scheduled, your final payment may be more or less than the amount of the final payment that is disclosed. If you elect voluntary payment protection, we will either include the premium or program fee in your payments or extend the term of your loan. If the term is extended, you will be required to make additional payments of the scheduled amount, until what you owe has been paid. You promise to make all payments to the place we choose. If this loan refinances another loan we have with you, the other loan will be canceled and refinanced as of the date of this loan. Unless otherwise required by law, payments will be applied to amounts owed in the manner we choose.

3. LOAN PROCEEDS BY MAIL - If the proceeds of this loan are mailed to you, interest on this loan begins on the date the loan proceeds are mailed to you.

4. SECURITY FOR LOAN - This Agreement is secured by all property described in the "Security" section of the Truth in Lending Disclosure. Property securing other loans you have with us also secures this loan, unless the property is a dwelling. In addition to your pledge of shares, we may also have what is known as a statutory lien on all individual and joint accounts you have with us. A statutory lien means we have the right under federal law and many state laws to claim an interest in your accounts. We can enforce a statutory lien against your shares and dividends, and if any, interest and deposits, in all individual and joint accounts you have with us to satisfy any outstanding financial obligation that is due and payable to us. We may exercise our right to enforce this lien without further notice to you, to the extent permitted by law. **For all borrowers:** You pledge as security for this loan all shares and dividends and, if any, all deposits and interest in all joint and individual accounts you have with the Credit Union now and in the future. The statutory lien and/or your pledge will allow us to apply the funds in your account(s) to what you owe when you are in default. The statutory lien and your pledge do not apply to any Individual Retirement Account or any other account that would lose special tax treatment under state or federal law if given as security.

5. DEFAULT - You will be in default under this Agreement if you do not make a payment of the amount required on or before the date it is due. You will be in default if you break any promise you made in connection with this loan or if anyone is in default under any security agreement made in connection with this Agreement. You will be in default if you die, file for bankruptcy, become insolvent (that is, unable to pay your bills and loans as they become due), or if you made any false or misleading statements in your loan application. You will also be in default if something happens that we believe may seriously affect your ability to repay what you owe under this Agreement or if you are in default under any other loan agreement you have with us.

6. ACTIONS AFTER DEFAULT - When you are in default, we may demand immediate payment of the entire unpaid balance under this Agreement. You waive any right you have to receive demand for payment, notice of intent to demand immediate payment and notice of demand for immediate payment. If we demand immediate payment, you will continue to pay interest at the rate provided for in this Agreement, until what you owe has been repaid. We will also apply against what you owe any shares and/or deposits given as security under this Agreement. We may also exercise any other rights given by law when you are in default.

If you default on your obligations under the terms of this Agreement and your other agreement(s) with us and do not cure the default under those terms, we may freeze, suspend, and/or disable your access to all of your accounts with us, including, without limitation, suspending your electronic account access; disabling your debit or ATM card; disabling all other functions at ATMs; and/or freezing your access to online or mobile Web platforms to check account balances, transfer funds, or make online payments except payments on the delinquent or overdrawn account.

7. EACH PERSON RESPONSIBLE - Each person who signs, or otherwise authenticates, this Agreement will be individually and jointly responsible for paying the entire amount owed under this Agreement. This means we can enforce our rights against any one of you individually or against all of you together.

8. LATE CHARGE - If you are late in making a payment, you promise to pay the late charge shown in the Truth in Lending Disclosure. If no late charge is shown, you will not be charged one.

9. DELAY IN ENFORCING RIGHTS - We can delay enforcing any of our rights under this Agreement any number of times without losing the ability to exercise our rights later. We can enforce this Agreement against your heirs or legal representatives.

10. CONTINUED EFFECTIVENESS - If any part of this Agreement is determined by a court to be unenforceable, the rest will remain in effect.

11. NOTICES - Notices will be sent to you at the most recent address you have given us in writing. Notice to any one of you will be notice to all.

12. USE OF ACCOUNT - You promise to use your account for consumer (personal, family or household) purposes, unless the Credit Union gives you written permission to use the account also for agricultural or commercial purposes, or to purchase real estate.

13. NO ORAL AGREEMENTS -- THIS NOTE CONSTITUTES A "WRITTEN LOAN AGREEMENT" PURSUANT TO SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, IF SUCH SECTION APPLIES. THIS WRITTEN LOAN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

14. OTHER PROVISIONS -

Credit Union COMMUNITY WEST CREDIT UNION
Borrower(s) DANIEL VANDERZWAAG

Loan No. 681

Acct. No.

SECURITY AGREEMENT

In this Agreement all references to "Credit Union," "we," "our" or "us" mean the Credit Union whose name appears on this document and anyone to whom the Credit Union assigns or transfers this Agreement. All references to the "Loan" mean the loan described in the Loan Agreement that is part of this document. All references to "you" or "your" mean any person who signs, or otherwise authenticates, this Agreement.

1. **THE SECURITY FOR THE LOAN** - You give us what is known as a security interest in the property described in the "Security" section of the Truth in Lending Disclosure that is part of this document ("the Property"). The security interest you give includes all accessions. Accessions are things which are attached to or installed in the Property now or in the future. The security interest also includes any replacements for the Property which you buy within 10 days of the Loan and any extensions, renewals or refinancings of the Loan. It also includes any money you receive from selling the Property or from insurance you have on the Property. If the value of the Property declines, you promise to give us more property as security if asked to do so.

2. WHAT THE SECURITY INTEREST COVERS/CROSS COLLATERAL PROVISIONS - The security interest secures the Loan and any extensions, renewals or refinancings of the Loan. The security interest also secures any other loans, including any credit card loan, you have now or receive in the future from us and any other amounts you owe us for any reason now or in the future, except any loan secured by your principal dwelling. If the Property is household goods as defined by the Federal Trade Commission Credit Practices Rule or your principal dwelling, the Property will secure only this Loan and not other loans or amounts you owe us.

3. **OWNERSHIP OF THE PROPERTY** - You promise that you own the Property or, if this Loan is to buy the Property, you promise you will use the Loan proceeds for that purpose. You promise that no one else has any interest in or claim against the Property that you have not already told us about. You promise not to sell or lease the Property or to use it as security for a loan with another creditor until the Loan is repaid. You promise you will allow no other security interest or lien to attach to the Property either by your actions or by operation of law.

4. PROTECTING THE SECURITY INTEREST - If your state issues a title for the Property, you promise to have our security interest shown on the title. We may have to file what is called a financing statement to protect our security interest from the claims of others. You irrevocably authorize us to execute (on your behalf), if applicable, and file one or more financing, continuation or amendment statements pursuant to the Uniform Commercial Code (UCC) in a form satisfactory to us. You promise to do whatever else we think is necessary to protect our security interest in the Property. You also promise to pay all costs, including but not limited to any attorney fees, we incur in protecting our security interest and rights in the Property, to the extent permitted by applicable law.

5. **USE OF PROPERTY** - Until the Loan has been paid off, you promise you will: (1) Use the Property carefully and keep it in good repair. (2) Obtain our written permission before making major changes to the Property or changing the address where the Property is kept. (3) Inform us in writing before changing your address. (4) Allow us to inspect the Property. (5) Promptly notify us if the Property is damaged, stolen or abused. (6) Not use the Property for any unlawful purpose. (7) Not retitle Property in another state without telling us.

6. PROPERTY INSURANCE, TAXES AND FEES - You promise to pay all taxes and fees (like registration fees) due on the Property and to keep the Property insured against loss and damage. The amount and coverage of the property insurance must be acceptable to us. You may provide the property insurance through a policy you already have, or through a policy you get and pay for. You promise to make the insurance policy payable to us and to deliver the policy or proof of coverage to us if asked to do so.

If you cancel your insurance and get a refund, we have a right to the refund. If the Property is lost or damaged, we can use the insurance settlement to repair the Property or apply it towards what you owe. You authorize us to endorse any draft or check which may be payable to you in order for us to collect any refund or benefits due under your insurance policy.

If you do not pay the taxes or fees on the Property when due or keep it insured, we may pay these obligations, but we are not required to do so. Any money we spend for taxes, fees or insurance will be added to the unpaid balance of the Loan and you will pay interest on those amounts at the same rate you agreed to pay on the Loan. We may receive payments in connection with the insurance from a company which provides the insurance. We may monitor our loans for the purpose of determining whether you and other borrowers have complied with the insurance requirements of our loan agreements or may engage others to do so. The insurance charge added to the Loan may include (1) the insurance company's payments to us and (2) the cost of determining compliance with the insurance requirements. If we add amounts for taxes, fees or insurance to the unpaid balance of the Loan, we may increase your payments to pay the amount added within the term of the insurance or term of the Loan.

7. INSURANCE NOTICE - If you do not purchase the required property insurance, the insurance we may purchase and charge you for will cover only our interest in the Property. The premium for this insurance may be higher because the insurance company may have given us the right to purchase insurance after uninsured collateral is lost or damaged. The insurance will not be liability insurance and will not satisfy any state financial responsibility or no fault laws.

8. DEFAULT - You will be in default if you break any promise you make or fail to perform any obligation you have under this Agreement. You will be in default if any property you have given us as security is repossessed by someone else, seized under a forfeiture or similar law, or if anything else happens that significantly affects the value of the property or our security interest in it. You will also be in default under this Agreement if the Loan is in default.

9. WHAT HAPPENS IF YOU ARE IN DEFAULT - When you are in default, we may demand immediate payment of the outstanding balance of the Loan without giving you advance notice and take possession of the Property. You agree the Credit Union has the right to take possession of the Property without judicial process if this can be done without breach of the peace. If we ask, you promise to deliver the Property at a time and place we choose. If the property is a motor vehicle or boat, you agree that we may obtain a key or other device necessary to unlock and operate it, when you are in default. We will not be responsible for any other property not covered by this Agreement that you leave inside the Property or that is attached to the Property. We will try to return that property to you or make it available for you to claim.

After we have possession of the Property, we can sell it and apply the money to any amounts you owe us. We will give you notice of any public disposition or the date after which a private disposition will be held. Our expenses for taking possession of and selling the Property will be deducted from the money received from the sale. Those costs may include the cost of storing the Property, preparing it for sale and attorney's fees to the extent permitted under state law or awarded under the Bankruptcy Code.

If you have agreed to pay the Loan, you must pay any amount that remains unpaid after the sale money has been applied to the unpaid balance of the Loan and to what you owe under this Agreement. You agree to pay interest on that amount at the same rate as the Loan until that amount has been paid.

If you default on your obligations under the terms of this Agreement and your other agreement(s) with us and do not cure the default under those terms, we may freeze, suspend, and/or disable your access to all of your accounts with us, including, without limitation, suspending your electronic account access; disabling your debit or ATM card; disabling all other functions at ATMs; and/or freezing your access to online or mobile Web platforms to check account balances, transfer funds, or make online payments except payments on the delinquent or overdrawn account.

10. DELAY IN ENFORCING RIGHTS AND CHANGES IN THE LOAN -
We can delay enforcing any of our rights under this Agreement any number of times without losing the ability to exercise our rights later. We can enforce this Agreement against your heirs or legal representatives. If we change the terms of the Loan, you agree that this Agreement will remain in effect.

11. CONTINUED EFFECTIVENESS - If any part of this Agreement is determined by a court to be unenforceable, the rest will remain in effect.

12. NORTH DAKOTA NOTICE TO BORROWERS PURCHASING A MOTOR VEHICLE - THE MOTOR VEHICLE IN THIS TRANSACTION MAY BE SUBJECT TO REPOSSESSION. IF IT IS REPOSSESSED AND SOLD TO SOMEONE ELSE, AND ALL AMOUNTS DUE TO THE SECURED PARTY ARE NOT RECEIVED IN THAT SALE, YOU MAY HAVE TO PAY THE DIFFERENCE.

13. NOTICE FOR ARIZONA OWNERS OF PROPERTY - It is unlawful for you to fail to return a motor vehicle that is subject to a security interest, within thirty days after you have received notice of default. The notice will be mailed to the address you gave us. It is your responsibility to notify us if your address changes. The maximum penalty for unlawful failure to return a motor vehicle is one year in prison and/or a fine of \$150,000.00.

☐ The following notice applies **ONLY** when the box at left is marked.

14. NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Receipt for RD-108 Dealer Transaction**Validation:**

07132015 LP D194 603 1708 1527.44
 603D1941708 077055 A
 S.I. RECORDED


Dealer
PFEIFFER LINCOLN MERCURY
Address
8250 PFEIFFER FARMS DR
City
BYRON CENTER, MI 49315
Dealer License No. 

Plate No. DHB4118 **Expires on** 09/30/2016
Year 2011 **Make** FORD
Vehicle No. 1FTFWLEFXBFA10174
Driver License No/PIDs of All Owners/Lessees

Months 12
Body Style PU
Fee Cat. or Wt. 000036
Code 01 **County** 70
License Fee 0.00
Title 15.00
Title Late Fee 0.00
Tax 1504.44
Transfer Fee 8.00
Total 1527.44

Odometer 077055 A

A = Actual mileage
 B = Not actual mileage
 C = Exceeds mechanical limits of odometer

Complete Name(s) and Address(es) of All Owners or Lessors
DANIEL LEE VANDERZWAAG
14500 TWIN OAKS ST
HOLLAND, MI 49424

Complete Name(s) and Address(es) of Lessees
 NONE



Transaction Type
TRANS TITLE/TRANS PLATE
263D1700140

MI
NO

Full Rights to
Survivor
 N

Error/Flash Condition:

First Secured Interest
COMMUNITY WEST CREDIT UNION
4045 60TH ST SE
KENTWOOD, MI 49512

Filing Date
 07/13/2015

Second Secured Interest
 NONE

Filing Date

Error/Flash Approval Reason:

Purchase Price of Vehicle

24850.00

Dealer Comment:
 NAME CHANGE-FULL NAME